

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY MATERIEL COMMAND
5001 EISENHOWER AVENUE, ALEXANDRIA, VA 22333-0001

AMC REGULATION
NO. 27-7

1 December 1992

Legal Services

PROCUREMENT FRAUD AND IRREGULARITIES

Local supplementation of this regulation is prohibited unless prior approval is obtained from the proponent.

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1. Purpose. This regulation provides specific guidance delineates the policies, procedures, and responsibilities for reporting and resolving allegations of procurement fraud and irregularities (PFI) within AMC.

2. Applicability. This regulation applies to Headquarters, U.S. Army Materiel Command (HQ AMC); AMC major subordinate commands (MSC), including subordinate installations and activities; and separate installations and activities reporting directly to HQ AMC and those organizations supported by AMC or MSC Legal Offices.

3. References. See appendix A.

4. Policies. a. Procurement fraud and irregularity allegations will be promptly and thoroughly addressed whenever encountered. Reports will be initiated in a timely manner and will be supplemented, as appropriate.

*This regulation supersedes AMC-R 27-7, 20 December 1985.

b. Investigations will be coordinated and monitored to see that they are properly developed, that interim corrective action is taken, as appropriate, and that final action is taken as expeditiously as possible.

c. Timely coordination on the status and disposition of cases will be maintained between AMC Components and the HQ AMC PFI Coordinator (PFC) and the Office of the Judge Advocate General Procurement Fraud Division (PFD).

d. The key elements of AMC's procurement fraud program are centralized policy making and program direction; decentralized responsibility for operational matters, such as reporting and remedial action; continuous case monitoring from the time fraud is first suspected until final disposition and commandwide fraud awareness training.

e. Remedies for procurement fraud irregularities will be pursued in a timely manner and coordinated with other agencies. Every effort will be made to support criminal investigation and prosecution of fraudulent activity. The entire spectrum of remedies, to include criminal, civil, administrative, and contractual will be pursued in a timely manner and coordinated with other agencies.

5. Responsibilities. a. The AMC PFC will have overall responsibility for the design and implementation of AMC's procurement fraud and irregularities program. Significant duties include: providing technical advice to PFAs; ensuring compliance with reporting requirements and establishing and maintaining effective liaison with the PFD and other Department of the Army (DA) and Department of Defense (DOD) components involved in fraud abatement.

b. Chief Counsels/chiefs of installation or activity legal offices and SJAs/Command Judge Advocates will appoint an attorney as the Procurement Fraud Advisor (PFA) for their command and all installations and activities reporting to that organization. Reports and recommendations will be transmitted through command channels to the PFA for the affected MSC. Chief Counsels will exercise supervisory authority to ensure the effective operation of the PFI program within their organization. Chief Counsels will also ensure that PFAs are adequately trained.

c. PFAs will have overall responsibility for the operation of the PFI program for that command/installation and activities reporting to that organization. PFAs shall be responsible for the initiation, transmittal and supplementation of all reports required by this regulation, Army regulations, the FARS, the DFARS, AFARS, and AMC FAR Supplement; for establishing points of contact to ensure commandwide implementation and coordination of the procurement fraud prevention effort, for providing training opportunities for command personnel, and for communicating information regarding investigations on a need-to-know

basis to command management officials. PFAs will review all PFI cases to determine whether it is appropriate to recommend the initiation of all possible contractual, administrative, criminal, or civil remedies.

d. Annual training in procurement fraud will be mandatory for all organizational elements involved in procurement activities. The PFA will be responsible for oversight of training. Such training may include lectures, classes, articles in post newspapers/bulletins, electronic mail/bulletin boards, and/or command letters. At a minimum, such training will include a procurement fraud-related article published quarterly in the command newspaper/bulletin or similar publication. The PFA will provide a written plan to the PFC of all proposed annual training for the coming year not later than (NLT) 15 January. Reports of completed training will be provided to the PFC semiannually NLT 30 June and 31 December.

e. PFAs should consider establishing a PFI coordinating committee for their organizations. These committees should be chaired by the PFA and include representatives from the procurement, product assurance, and test and investigative communities and should include other Command personnel as necessary. These committees will meet as necessary to exchange fraud information and to coordinate training and other fraud prevent programs.

6. Reporting requirements. a. PFAs are responsible for the initiation and transmittal of the Procurement Flash Report required by AR 27-40 (Litigation), chapter 8, paragraph 8-5. Flash reports will be submitted directly to PFD with a copy furnished to the AMC PFC (AMCCC-G) and, if known, to any other PFAs affiliated with the particular contract or contractor.

b. Reports per DFARS 209.406-3 will be initiated by the Contracting Officer as required with one copy sent directly to PFD and the original and remaining copy forwarded to the AMC PFC for endorsement to PFD. The PFA should be available to assist in the preparation of these reports. PFAs will endorse the forwarding of any 406 reports stating (a) that the PFA has reviewed the report, (b) that there is/is not sufficient evidence provided in the report to support the recommendation(s) of the Contracting Officer, and (c) whether or not the PFA concurs in the Contracting Officer's recommendation(s).

c. When civil recovery appears possible, the DFARS report shall be supplemented to include a statement whether any setoff or counterclaim exists and, if so, the documentation to support the setoff or counterclaim; a brief statement of the applicable law with citations to legal authority and such argument and comments upon the facts as is necessary to show the applicability of the authorities cited; and, a list of all possible witnesses for the government with the present or last known address, telephone number, and social security number.

d. MSC PFAs and PFAs reporting directly to AMC will submit to the AMC PFC (AMCCC-G) quarterly reports on the status of all PFI cases being monitored by their organization, consolidating all reports from subordinate organizations. These reports shall be provided NLT January 15th for the first quarter of the fiscal year, April 15th for the second quarter of the fiscal year, July 15th for the third quarter of the fiscal year, and October 15th for the fourth quarter of the fiscal year. See appendix C for sample format.

e. All instances of suspected fraud will be reported to the on-site U.S. Army Criminal Investigation Command (USACIDC) economic crime offices. Reports from AMC components not having on-site USACIDC economic crime offices should be submitted to the HQ AMC USACIDC Fraud Coordinator, ATTN: AMCPE-S-CID (Tel:DSN 284-9454). USACIDC will be responsible for assessing each allegation reported and for making the necessary referrals/ notifications to other investigative agencies.

f. All requests for victim impact statements from agencies outside DA are to be coordinated through the MSC PFA and the AMC PFC with PFD. No victim impact statement will be provided to a United States Attorney, Department of Justice attorney or criminal investigator without the approval of PFD. A request for a victim impact statement is not a routine exchange as envisioned by AR 27-40, paragraph 8-7c.

g. All recommendations to join or not join a qui tam suit shall be forwarded through the AMC PFC for review and endorsement to PFD. No recommendation will be sent from a MSC or PFA directly to Department of Justice without PFD approval.

7. Coordination and cooperation. a. All AMC personnel will cooperate to ensure that investigations and prosecutions of procurement fraud are advanced in a timely and thorough manner. Requests for assistance from Federal prosecutors or investigators should be processed through the local PFA. When the conduct of criminal investigation and prosecutions conflict with the progress of AMC procurements, reasonable deference will be given to criminal investigator and prosecutors whenever possible. In cases of conflict, the matter will be referred to the AMC PFC for resolution.

b. In cases which are pending review or action by the Justice Department or by a United States Attorney's Office, PFAs will coordinate with the Justice attorney or Assistant United States Attorney (AUSA) responsible for the case prior to initiating any contractual or administrative remedy which may affect the matter under review. PFAs will establish effective coordination with contracting offices to ensure that contracting officers do not enter into any contractual action or remedy which may affect the matter under investigation. PFAs should also remind Contracting Officers of their lack of authority in settling claims if suspected fraud is involved (see FAR 33.210 and 49.106, Contract

Disputes Act of 1978 (41 U.S.C. 601-613); see also, FAR 3.700 in cases where there has been a final conviction, and FAR 3.104-11, for Procurement Integrity Act violations).

c. Authority to deny a request by a Federal prosecutor, investigator or auditor is expressly reserved to the Office of Command Counsel, HQ AMC. Requests from AMC components to deny cooperation in such instances will be forwarded to the AMC PFC (AMCCC-G) for resolution.

d. AMC components should request access to information obtained during criminal investigations to assist them in taking appropriate administrative, contractual, and civil remedies. Requests for this information should be made directly by the PFA to the appropriate Federal investigative agency. Difficulties in obtaining information which cannot be resolved locally will be referred to the AMC PFC or PFD for appropriate action.

8. Testing. All requests for testing of defective items under criminal or civil investigation shall be processed per the procedures at \ **appendix B**. Test plans approved by a requesting United States Attorney may not be changed without approval from that United States Attorney's office including coordination with the AMC PFC and PFD.

The proponent of this regulation is the United States Army Materiel Command. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Commander, HQ AMC, ATTN: AMCCC-G, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001.

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APPENDIX A

REFERENCES AND RELATED PUBLICATIONS

DOD Directive 5106.1	Inspector General of the Department of Defense
DOD Directive 7050.5	Coordination of Remedies for Fraud and Corruption Related to Procurement Activities
DOD Instruction 5240.4	Reporting of Counter- intelligence and Criminal Violations
DOD Instruction 3505.2	Criminal Investigation of Fraud Offenses
<u>Army Regulations</u>	
27-40	Litigation
195-1	Army Criminal Investigation Program
195-2	Criminal Investigation Activities
190-30	Military Police Investigations
190-40	Serious Incident Report
600-50	Standards of Conduct for Department of the Army Personnel
<u>Criminal Statutes</u>	
15 USC 1-7	Sherman Antitrust Act
15 USC 465	Offenses and Penalties Relating to Small Businesses
15 USC 781	Foreign Corrupt Practices Act
18 USC 2	Principals
18 USC 4	Misprision of Felony

18 USC 201-208	Bribery, Graft, and Conflicts of Interest
18 USC 209	Illegal Supplementation of Government Salary
18 USC 218	Voiding Transactions; Recovery
18 USC 281	Prohibited Practices by Retirees
18 USC 285	Taking or Using Papers Relating to Claims Without Authority
18 USC 286	Conspiracy to Defraud the Government with Respect to Claims
18 USC 287	False Claims
18 USC 371	Conspiracy to Commit Offense or to Defraud the United States
18 USC 495	Alteration/Forgery
18 USC 641	Theft or Conversion of Public Property or Records
18 USC 1001	False Statements Act
18 USC 1341	Mail Fraud
18 USC 1343	Wire Fraud
18 USC 1382	Trespass Upon a Military Installation
18 USC 1905	Disclose of Confidential Information
18 USC 1961-68	Racketeer Influenced and Corrupt Organizations
18 USC 2156	Production of Defective National Defense

18 USC 1031	Major Fraud Against the United States
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41 USC 51-54	Anti-Kickback Act
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Civil Statutes

10 USC 2207	Termination Upon Gift of Gratuities
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10 USC 2393	Suspension/Debarment
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15 USC 1-7	Sherman Antitrust Act
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28 USC 2514	Forfeiture Statute
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31 USC 3729-3731	False Claims
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41 USC 51-53	Anti-Kickback Act
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41 USC 604	Fraudulent Claims by a Government Contractor
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41 USC 35 et. seq.	Walsh-Healey Act
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41 USC 351 et. seq.	Service Contract Act
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40 USC 276a	Davis Bacon Act
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Federal Acquisition Regulation

Part 3	Improper Business Practices and Personal Conflicts of Interest
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Subpart 9.4	Debarment Suspension and Ineligibility
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Note: (See Also DFARS, subpart 209.4 and AFARS, subpart 9.4)

Subpart 9.5	Organizational Conflict of Interest
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Miscellaneous

Federal Rules of Criminal Procedure, Rule 6(e) Grand Jury Secrecy.

OMB, policy letter No. 82-1, subject: Policy Guidance Concerning Government-Wide Debarment, Suspension, and Ineligibility.

44 Comp Gen 110 (1964) - authority and responsibility to withhold Government payment on a claim suspected of being fraudulent.

Department of Justice, Civil Division, Civil Fraud Monograph.

U.S. Army Criminal Investigation Pamphlet 195-8, Common Offenses Arising during Economic Crime Investigations.

Department of Defense, Office of the Inspector General, "Indicators of Fraud in Department of Defense Procurement"

APPENDIX B

PROCEDURES FOR TESTING DEFECTIVE ITEMS UNDER CRIMINAL
OR CIVIL INVESTIGATION

B-1. Under no circumstances is testing to proceed unless the Command has committed sufficient funding to cover the entire cost of the projected testing.

B-2. No testing will be initiated unless there has been a written request for the testing to the appropriate Procurement Fraud Advisor from a criminal investigator or Assistant United States Attorney (AUSA) or Department of Justice Attorney (AUSA is used in these procedures to indicate either an AUSA or Department of Justice attorney). If they have not already done so, criminal investigators should be requested to coordinate their testing requests with the AUSA overseeing the investigation.

B-3. Barring extraordinary circumstances, only one test will be conducted to support the criminal and civil recovery efforts of a procurement fraud/irregularity matter. Early coordination with the Civil Division of Department of Justice or the local United States Attorneys Office is necessary to ensure that testing funds are not wasted.

B-4. The request for testing should include a clear concise statement of the purpose of the testing to include a statement of the allegations made and the contract number(s) involved. Any test Plan which requires destructive testing must be approved by the AUSA.

B-5. No testing will be initiated unless a test plan has been developed which states:

- a. Contract number(s) involved.
- b. National Stock Number (NSN) of the item to be tested.
- c. Purpose of the testing.
- d. Alleged defect and or the contractual requirement which was violated.
- e. CID report of investigation (ROI) number or the DCIS case number.

- f. How much the test will cost (a cost proposal should be an attachment to the test plan).
- g. Where the test will be conducted.
- h. How the test will be conducted.
- i. Name and telephone number of the test team leader.
- j. Names of all test team members.
- k. Approximate dates of the testing.
- l. Date that completion of the test is required.
- m. Clear statement of the desired product (i.e., test report, raw data, analysis of results, evaluation of test results).
- n. PRON to fund the testing.
- o. Retention plan.

B-6. The test plan shall be coordinated with and concurrence received in advance from the appropriate personnel in the Procurement Directorate, Product Assurance and Test Directorate, the Procurement Fraud Advisor, and the investigator/AUSA requesting the test. No testing will be initiated until the criminal investigator/AUSA who requested the testing has approved the test plan.

B-7. If the items tested are to be retained as evidence, the criminal investigator should arrange for retention of the evidence. While AMC will support evidence retention, this is primarily the responsibility of the criminal investigators. Agents should be advised that putting items in Code L (on hold pending litigation) is insufficient to protect it from being released to the field. A decision not to retain the tested items as evidence must have the approval of the AUSA.

B-8. All items to be tested should be from a statistically valid random sample. The sample should conform with the inspection requirements of the contract or be in conformance with a random sample specifically developed for the instant test plan. It is recommended that a statistician be consulted to determine the feasibility of a random sample specifically created to support the test plan.

B-9. Results of testing should be available to Command and DA personnel for appropriate contractual and administrative remedies. Any request for testing that indicates that dissemination of the testing results will be limited by Rule 6(e) of the Federal Rules of Criminal Procedure is to be forwarded through the AMC Procurement Fraud Coordinator to DA Procurement Fraud Division prior to the initiation of any testing.

B-10. Resolution of problems associated with testing requests should be conducted at the MSC level. Under AMC-R 27-7, the authority to refuse a testing request resides with the Office of Command Counsel. Any disputes which cannot be resolved at the MSC level will be forwarded to the AMC Procurement Fraud Coordinator for resolution. This includes disputes regarding funding or any time sensitive issue.

B-11. Second requests for testing of the same item due to a change in the investigative plan require coordination by the PFA with the investigator and AUSA overseeing the investigation to determine the deficiencies in the earlier test. Disputes which cannot be resolved between the AUSA, PFA, and investigator regarding testing are to be forwarded simultaneously to the AMC Procurement Fraud Coordinator and PFD for resolution. The procedures established in paragraphs 5 and 6 apply for second requests for testing with the additional requirement that the Assistant United States Attorney must be requested to approve the test plan.

APPENDIX C

QUARTERLY PROCUREMENT FRAUD AND
IRREGULARITIES STATUS REPORT
(Sample)

AMCXXXXCOM
Command/Activity

Contractor: XYZ Corp., Timbuktoo, NY

CID/DCIS Case No.: 0035-89-CID122-5555

Contract No.: DAAA09-89-C-0999

Contract Item: A1-truck

Alleged Misconduct: False statements (18 USC 1001)
Illegal kickbacks (41 USC 51 - 54)
Conspiracy (18 USC 286)

Investigative Agency: DCIS, Philadelphia, Bill Christianson
(215) 447-5750; CID, Fort Monmouth, Carl
Russ, (215) 566-7556; EPA Investigator,
John Aduddell (215) 597-1795; FBI
(environmental), Thomas Cortese (215)
353-4500.

AUSA (Civil/Criminal): Mr. Bill Smith (Civil), Tacoma, WA,
(209) 555-5555

PFD Attorney: Major Sara Jones, (703) 696-1550.

Recovery action/quantum: 3/11/91; \$1M; settlement.

Qui Tam:

Suspension/Debarment: 3/12/91; The XYZ Corp., its president,
I.B. Sleez, and its marketing manager,
Corr Rupt, debarred for 3 years by Army
S/D Authority.

Status: 2/11/89: received initial CID report.
2/12/89: flash report sent.
3/10/89: final CID report completed.
3/11/89: 406 report sent.

4/22/89: AUSA agreed to prosecute case.
5/23/89: CID/DCIS report key witness
spills all.
3/11/91: AUSA settled case for \$1M.
Keep running account with date for each
additional update.